

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civ. No. 97-803 JP/RLP

ELEPHANT BUTTE IRRIGATION
DISTRICT, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

At the mediation organizational meeting held on July 15, 1998, there were questions as to when and to whom El Paso County Water District No. 1 (hereinafter "Water District") should deliver the draft of its proposed operating plan. Following the meeting, the mediators conferred with James M. Speer, Jr., Esquire, counsel for the Water District. The main concern of the Water District was that they be given a fair opportunity to present their plan at our meeting on July 28, 1998 without having other parties forming argument alliances and fixed positions in advance, and "poisoning the well" insofar as the presentation was concerned. The mediators wanted to provide as much information as possible in advance of the mediation discussions. We suggested that the plan be circulated to all counsel involved in the mediation; that such circulation be made under specific protection¹ ordered by the Court; and that although counsel could confer with their clients

¹ A general order addressing confidentiality, etc. will be entered. Since the proposed distribution will precede such an order, I am providing special specific protection for the document in question.

and with their experts in preparation for the meeting on July 28, that counsel and their clients and experts should not confer with other counsel, other parties, or other experts before the Water District has the opportunity to explicate its plan at the meeting on July 28, 1998. Our suggestion was acceptable to the Water District. Proceeding in this way will allow early release of the proposed draft operating plan, and it will also allow for a fair presentation of the plan by the Water District on July 28.

WHEREFORE,

IT IS ORDERED that El Paso County Water District No. 1 shall promptly and expeditiously deliver to counsel for the other participants in this mediation the documents comprising the draft operating plan it will explicate on July 28, 1998.

IT IS FURTHER ORDERED that the recipients of this plan will not show or disclose the plan to any persons other than their own clients or experts; that any persons to whom such disclosure shall be made shall agree to be bound by the provisions of this Order; and that a copy this Order shall be delivered to those persons to whom disclosure of the plan is made.

FINALLY, IT IS ORDERED that counsel, the participants they represent, and the experts with whom they confer shall not confer or join with other counsel, participants, and experts to formulate joint arguments and positions before presentation of the operating plan on July 28, 1998.


UNITED STATES MAGISTRATE JUDGE